

1 **CITY COUNCIL OF THE CITY OF ANNAPOLIS**

2
3 **ORDINANCE NO. O-6-04**

4
5 **Introduced by Mayor Moyer**
6 **Alderman Hammond**
7 **Alderman Fox**
8 **Alderman Cohen**
9

10
11 **AN ORDINANCE** concerning
12

13 **Lease of City Property - Boat Shows**

14
15 **FOR** the purpose of authorizing the City Council to lease certain municipal property
16 located in the general harbor, Dock Street and Edgewood Road areas to United
17 States Yacht Shows, Inc. and Annapolis Boat Shows, Inc., bodies corporate, for a
18 certain period of time in October 2008, subject to certain terms, provisions and
19 conditions, for the purpose of conducting boat shows; and all matters relating to said
20 lease.
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23
24 **WHEREAS,** United States Yacht Shows, Inc. and Annapolis Boat Shows, Inc. desire to
25 lease certain municipal property for the purpose of conducting boat shows;
26 and
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28 **WHEREAS,** the Annapolis City Council believes that these proposed boat shows would
29 inure to the benefit of the City; and
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31 **WHEREAS,** a lease setting forth details of the rental has been prepared and is considered
32 satisfactory; and
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34 **WHEREAS,** the Annapolis City Council finds that the premises subject to the proposed
35 lease is not needed by the City for public use during the terms of the lease;
36 and
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38 **WHEREAS,** Article III, Section 8 of the Charter of the City of Annapolis requires the
39 passage of an ordinance to authorize the lease.
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41 **NOW THEREFORE:**
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43 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**
44 **COUNCIL** that the proposed lease between the City of Annapolis and United States Yacht
45 Shows, Inc. and Annapolis Boat Shows, Inc. for the rental of certain municipal property in

1 the general harbor, Dock Street and Edgewood Road areas, as described in the lease, a
2 copy of which is attached hereto and made a part hereof, for the period from October 6
3 through 21, 2008, subject to the option to expand or reduce the number of days of the
4 tenancy as provided in the lease, is hereby approved and the Mayor is hereby authorized
5 to execute the lease on behalf of the City of Annapolis. It is further expressly found by the
6 City Council that the boat shows to be conducted as a result of the lease will stimulate local
7 interest in the boating industry, encourage visitors and residents of the City to visit the
8 harbor and dock area, will generate tax revenues and rental income to the City and
9 otherwise provide economic benefits to the City, and will generally further the public need
10 and purposes for which the property is devoted.

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12 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
13 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its
14 passage.

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17 **ADOPTED** this 12th day of April, 2004.

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20 **ATTEST:**

THE ANNAPOLIS CITY COUNCIL

21
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23 _____
24 Deborah Heinbuch, MMC
25 City Clerk

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28 **BY:** _____
29 ELLEN O. MOYER, MAYOR
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LEASE AGREEMENT

Authorized by O-6-04

THIS AGREEMENT, made this ____ day of _____, 2004, by and between **THE CITY OF ANNAPOLIS**, a municipal corporation (hereinafter called "Lessor") on the one hand and the **UNITED STATES YACHT SHOWS, INC.** and **ANNAPOLIS BOAT SHOWS, INC.** (hereinafter jointly and severally called "Lessee") on the other hand.

Article I

Section 1.1. Premises and Term: Lessor hereby leases to Lessee, for the purpose of holding two boat shows, that property and water hereinafter called the "premises" described and shown on Exhibit A, which is attached hereto and made a part hereof, for the periods of time hereinafter designated, subject to the provisions and terms of this agreement:

2008 - October 6 through October 21, inclusive.

In addition, if available for such use, Lessee shall have the right to occupy that portion of Lessor's former sewage treatment property located on Edgewood Road as shown on Exhibit B hereto (hereinafter "Edgewood Road property") from August 1, to October 31 of 2008 for the purpose of staging and breakdown of the shows. Occupancy shall be subject to this Agreement. If so used, the word "premises" used in this Agreement shall include the Edgewood Road property.

Section 1.2. Revisions to Premises: Lessor shall have the right to change the area of the premises from time to time in order to reflect any change in ownership or infrastructure. If the total area of the premises (exclusive of the Edgewood Road property) is reduced pursuant to this paragraph by five percent (5%) or more of the total area, Lessee shall be entitled to pro rata reduction in the Base Rent. If the total area of the premises is reduced pursuant to this paragraph by ten percent (10%) or more of the total area, Lessee shall have the right to pro rata reduction or to terminate the Lease. If Base Rent is determined using Ticket Sales Base Rent, then the reduction hereunder shall be calculated by reducing the fifty percent (50%) multiplier under Section 1.3(a) to

1 reflect the area reduction (eq.: if the premises is reduced ten percent (10%) then Base Rent will
2 equal: $[50\% \times 90\%] \times$ gross ticket receipts. If the Base Rent is determined using Minimum Base
3 Rent, then the reduction hereunder shall be calculated by reducing the Base Rent by the percentage
4 of the reduction of the total area. For purposes of this Section, the Edgewood Road property shall
5 not be included in premises area calculations or in rent adjustment calculations.

6 **Section 1.3. Rent:** Except as provided in Section 2.3, Base Rent shall be: (A) the greater
7 of (i) 50% of Lessee's gross receipts (after deducting admission taxes) from the sale by Lessee of
8 tickets for admission to the shows for that year (hereinafter "Ticket Sales Base Rent") or, (ii) Three
9 Hundred Seventy Five Thousand Nine Hundred Fifty Dollars (\$375,950.00) (hereinafter "Minimum
10 Base Rent"); plus (B) if the Edgewood Road property is used, Two Thousand Sixty Dollars
11 (\$2,060.00) each year used (hereinafter "Edgewood Road Rent"). Lessee shall pay Lessor the
12 Minimum Base Rent, in full, within thirty (30) days of the close of the show. Any further monies
13 over the Minimum Base Rent due to Lessor as a result of ticket sales shall be paid by Lessee to
14 Lessor simultaneously with the payment of the State admissions tax. Proof of gross receipts from
15 ticket sales shall be supplied at that time to the City of Annapolis Director of Finance in a form
16 satisfactory to the said Director. In addition to the Base Rent, Lessee shall pay Lessor, Additional
17 Rent equal to Twenty Five Thousand Seven Hundred Fifty Dollars (\$25,750.00) toward the costs
18 incurred by the City in providing electricity, water, inspections and public safety services to the Boat
19 Shows and in providing increased public services during the Shows. Lessee shall pay Lessor the
20 Additional Rent and (if applicable) Edgewood Road rent, in full, at the time Lessee pays the
21 Minimum Base Rent.

22 **Article II**

23 **Section 2.1. Number of Days:** Lessor grants to Lessee the right to add one day at the end
24 of either or both of the two boat shows for general public admission. Lessee shall have the right,
25 in its sole discretion, to reduce the number of days of either or both of the boat shows.

26 **Section 2.2. Other Boat Shows:** Lessor covenants that it will not lease the premises for the
27 purpose of holding boat shows on the premises from June 1 through November 30 of 2008. Lessee

1 may, within its sole discretion, provide written authority to waive these restrictions. These
2 restrictions shall be deemed to be waived by Lessee automatically as to either boat show (power or
3 sail) reduced to less than one 10-hour day under Section 2.1.

4 **Section 2.3. Adjustment to Rent:** The Minimum Base Rent and Additional Rent shall be
5 increased or reduced proportionately, if Lessee exercises its rights to extend or shorten the number
6 of days pursuant to Section 2.1. Notice of any such extension or shortening shall be given by Lessee
7 in writing to Lessor by June 1 of the year in which the affected show is to be held. All of the other
8 provisions of the lease shall remain in full force and effect.

9 **Article III**

10 **Section 3.1. Facilities and Services:** Lessee shall have the use of the following facilities
11 and services without additional charge:

12 All that area indicated on Exhibit A (except as the area may be
13 revised pursuant to Paragraph 1.2 hereof), which is attached hereto
14 and made a part hereof, including Lessor's right and interest in the
15 so-called "Fawcett's Lot", and all related facilities including ingress
16 and egress, existing and normal street and harbor lighting, existing
17 and normal electricity, water supply for said area, and normal police
18 and fire protection.

19 **Section 3.2. Police Services:** Lessor agrees to provide police services related to traffic
20 control outside the show, security for Boat Show office within the show and liaison with Lessee's
21 security guards inside the show without further charge.

22 **Section 3.3. Fire Services:** Lessor agrees to provide fire protection as required without
23 further charge. Following the erection of all booths and other show structures as described under
24 Section 7.1 hereof but before the show opens, the parties shall meet at the premises to assure
25 compliance with Fire Department regulations and accessibility of fire lanes and turning radius. No
26 open flame devices or running of watercraft propulsion engines shall be permitted on the demised
27 premises during the open hours of the shows.

Section 3.5. Parking and Transportation: The Lessee shall coordinate all plans for the provision of any intra-city mode of transportation during the course of the boat shows with the City of Annapolis Department of Transportation. Lessee shall furnish to Lessor a transportation plan including a parking element.

Section 3.7. Pre-Show Meetings and Inspection: Prior to the opening of each show, representatives of the Annapolis Police Department, Annapolis Fire Department and Annapolis Department of Public Works shall inspect the premises and nearby areas with Lessee's representative to determine compliance with City requirements. Written approval by representatives of all three departments is required before Lessee may open the show. The opening of the show shall not be delayed by any department whose representative is not present for said inspection. Lessor shall not refuse permission to open the show or any part of the show under this paragraph unless a threat to health or safety has been identified. Lessor shall make every effort to limit that part of the show not opened in the event of such threat and to allow Lessee to open the closed portion of the show as soon as the threat is abated to Lessor's satisfaction. All other federal, state or county permits which may be required shall be the responsibility of the Lessee.

Section 4.1. Insurance: Lessee shall, at its own expense, obtain and keep in full force and effect comprehensive commercial general liability insurance of no less than Two Million Dollars

1 (\$2,000,000.00) combined single limit, bodily injury and property damage; and Eight Million
2 Dollars (\$8,000,000.00) umbrella policy; which shall be effective during the entire period of time
3 during which the Lessee shall use or occupy the premises, or any part thereof.

4 Such insurance policy shall specifically name the City of Annapolis, and in their capacity
5 as such, the officers, agents and employees thereof, as additionally insured, and insure against any
6 and all loss, costs, damages, and expenses suffered by any person, or to any property, including
7 property owned by Lessor, due to or alleged to be due to: an act, omission or the negligence of
8 Lessee, its officers, agents, employees, vendors, subtenants or contractors; or directly or indirectly
9 to the use of the premises, or any part thereof by Lessee, its officers, agents, employees, vendors,
10 subtenants or contractors.

11 The insurer or insurers of the policy or policies referred to in the preceding paragraph shall
12 be: authorized to write the required insurance; approved by the Insurance Commissioner of the State
13 of Maryland; and subject to the reasonable approval of the City Attorney of Annapolis. The form
14 and substance of the policy or policies of insurance shall also be subject to reasonable approval by
15 the City Attorney of the City of Annapolis, and shall be submitted to the City Attorney for such
16 approval not less than thirty (30) days prior to Lessee's occupancy of the premises. Said policy or
17 policies of insurance shall then be secured by Lessee and filed with the City Attorney of the City of
18 Annapolis not less than fifteen (15) days prior to Lessee's occupancy of the premises. Said
19 approvals shall not be unreasonably withheld.

20 The Certificate for each such insurance policy shall contain a statement on its face that the
21 insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium,
22 or otherwise, and whether at the request of Lessee or for any other reason, except after thirty (30)
23 calendar days advance written notice mailed by the insurer to the City Attorney of the City of
24 Annapolis and that such notice shall be transmitted postage prepaid, with return receipt requested.

25 The obligations of Lessee under this Article are part of but do not limit or satisfy Lessee's
26 obligations under Article V.

27 **Article V**

Section 5.1. Indemnity: Lessee agrees that it shall forever indemnify, defend and hold harmless the Lessor, its officers, agents, employees, from and against any and all claims, suits, actions, judgments, and liability for loss, injury, damages and/or expenses suffered or alleged to have been suffered by any person or to any property due to or alleged to be due to: an act, omission or the negligence of Lessee, its officers, agents, employees, vendors, subtenants or contractors; or directly or indirectly the use of the leased premises, or any part thereof, by Lessee, its officers, agents, employees, vendors, subtenants or contractors.

Lessee agrees to reimburse Lessor, within thirty (30) days after demand for such reimbursement, for any damage done to Lessor's buildings, facilities, equipment or property caused by an act, omission or the negligence of Lessee, its officers, agents, employees, vendors, subtenants or contractors during Lessee's use and occupancy of the leased premises or any part thereof.

Article VI

Section 6.1. Security: Lessee shall contract with and pay, as independent contractors, security guards from an agency duly licensed by the State of Maryland, in numbers sufficient to maintain security, peace and order at the boat shows inside the premises during the lease term.

Article VII

Section 7.1. Interior Construction: Lessee shall have the right to construct, install or erect seats, platforms, booths, tanks, scaffolding, rigging, floating piers, pilings, docks, catwalks, tents, exhibits, and any other apparatus or structure which Lessee may deem necessary or desirable for the purpose of presenting the boat shows. In addition, the Lessee shall have the right to erect and construct a temporary fence so as to enclose the premises in such a manner as to limit entry onto the premises through controlled entrances. Such fence shall not contain barbed wire, razor wire or any similar materials.

Section 7.2. Exterior Construction: Lessee agrees to erect and construct temporary wooden sidewalks, wherever necessary to provide for pedestrian traffic, outside of the leased premises where the existing sidewalks are enclosed in the premises by said temporary fence described in Section 7.1. Said walks shall be handicap accessible and illuminated during the hours of darkness and maintained by Lessee in a safe and secure condition.

Section 7.3. ADA and Other Permits: Lessee hereby assumes exclusive responsibility for compliance with any and all applicable provisions of the Americans with Disabilities Act of 1990, as amended from time to time at the demised premises, during the entire time Lessee uses or occupies those premises, or any part thereof, pursuant to this Lease Agreement. Subject to the inspection provisions of Section 3.7 and to standard public safety and health approvals, any and all permit, license or authorization required to be obtained from the City or any agency thereof by the Lessee during the term of this Lease for the purpose of constructing or erecting the temporary structures described in Sections 7.1 and 7.2 above or for operating the shows, shall be deemed granted and issued upon the execution of this Lease by the Lessor and Lessee. All other federal, state or county permits, which may be required shall be the responsibility of the Lessee.

Article VIII

Section 8.1. Trash: Lessee, at its own expense, shall provide an adequate number of trash containers for its use within the show grounds during the entire occupancy period of the premises and shall provide for the prompt removal of said containers, trash and refuse. Lessor, at its own expense, shall provide an adequate number of trash dumpsters outside the show grounds for the use of Lessee during the occupancy period and shall provide for the prompt removal of trash and refuse in these dumpsters.

Section 8.2. Cleanliness: Lessee shall be responsible for keeping the premises free of debris, trash and refuse and shall place the same in dumpsters or receptacles.

Section 8.3. Sanitation and Toilets: Lessee shall, at its own expense, provide adequate and sanitary toilet facilities throughout the demised premises for use by the general public and others attending or participating in the boat shows.

Article IX

Section.9.1. Quiet Enjoyment: Lessor covenants with Lessee that at all times during the term of this Lease Agreement, Lessee shall peacefully hold and quietly enjoy the demised premises without any disturbance or hindrance from Lessor or from any other person claiming through Lessor, except that the City or others claiming through the Lessor, may enter onto the demised premises to effect necessary repairs to their own facilities as reasonably contemplated by the terms of this Agreement and to assure compliance with the terms of this Agreement. Lessee shall cooperate with the Lessor to effect this access to the demised premises.

Section 9.2. Trash and Public Safety Cooperation: The parties agree to cooperate with each other and use their best efforts to ensure that there is prompt trash removal, public safety protection and adequate traffic control during the designated period of occupancy by the Lessee of the premises.

Article X

Section 10.1. Condition of Premises After Show: Following the occupancy period, the Lessee, at Lessee's sole expense, shall return the premises in the same or superior condition than received, natural wear and tear excepted.

Section 10.2. Lessee's Equipment After Show: Prior to the expiration of the lease term, Lessee shall immediately remove all of its property, fixtures and chattels from the leased premises. In the event that Lessee, its officers, agents, employees, vendors, subtenants or contractors fail to remove any item of property, Lessor reserves the right to remove and store any such property after the expiration or termination of the lease term at Lessee's expense or as an alternative, to leave the property at the leased premises. In either case, Lessor shall charge Lessee per diem rental for storage of such property. Lessor shall bear no responsibility or liability for damage to or expense incurred as a result of property left, removed or stored under the provisions of this Section. Lessee shall pay to Lessor any expenses or charges under this Section billed to Lessee by Lessor within thirty (30) days after delivery of any such bill by Lessor to Lessee.

Section 10.3. Post-Show Inspection: Within ten (10) days following the expiration of the occupancy period, the Lessee shall accompany the Lessor during a tour of the premises to determine the condition thereof. Items corrected or repaired by the Lessor, deemed by Lessor to be the responsibility of Lessee, shall be billed by the Lessor and paid by the Lessee within thirty (30) days after receipt of such bill.

Article XI

Section 11.1. Remedies: It is understood and agreed that any and all duties, liabilities and/or obligations imposed upon or assumed by the Lessee and Lessor by or under this lease shall be taken or construed as cumulative and that the mention of any specified duty, liability or obligation imposed upon or assumed by Lessee or Lessor under this Lease, shall not be taken or construed as a limitation or restriction upon any or all of the other duties, liabilities, or obligations imposed upon or assumed by the Lessee under this Lease. The remedies provided herein shall be construed to be cumulative and in addition to any other remedies provided herein, or any remedies provided in law

1 or equity which the Lessor or Lessee would have in any case. It is understood and agreed that
2 Lessor shall have the right to seek and obtain in any court of competent jurisdiction an injunction
3 without the necessity of posting a bond to restrain a violation or alleged violation by Lessee of any
4 covenant or covenants contained in this agreement, anything to the contrary notwithstanding. In no
5 case shall a waiver by either party of the right to seek relief under this provision constitute a waiver
6 of any other or further violation. The remedies provided hereunder shall not be deemed exclusive
7 of other remedies not specified.

8 **Article XII**

9 **Section 12.1. Impossibility of Performance:** If, for any reason, an unforeseen event not the
10 act of Lessor occurs, including but not limited to fire, casualty, act of God, labor strike or other
11 unforeseen occurrence which renders impossible the fulfillment of any rental period of this Lease,
12 Lessee shall have no right to nor claim for damages against Lessor; but Lessee shall not be liable
13 for the payment of rent for said rental period, except that if such impossibility relates only to more
14 than five percent (5%) of the rental period, Base Rent, if determined under Section 1.3(A)(ii) hereof,
15 shall be prorated to account for the number of scheduled hours the Show is not open to the public.

16 **Article XIII**

17 **Section 13.1. Payment:** Lessee shall make all payments due under this Agreement by
18 check, made payable to the City of Annapolis. In addition to all other amounts due hereunder,
19 Lessee shall pay Lessor a monthly late fee of 1.5% (18% per annum) of any payment more than
20 sixty (60) days past due, until paid.

21 **Article XIV**

22 **Section 14.1. Time is of the Essence:** Time is of the essence in the performance of this
23 Agreement, and the times herein granted shall not be extended for any reason, except as provided
24 herein, for the occupancy or use of the aforementioned premises or for the installation or removal
25 of equipment, materials or displays therefrom without written permission from the Lessor.

26 **Article XV**

Article XVI

Article XVII

Article XVIII

Article XIX

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Article XX

Section 20.1. Immunities: Nothing herein shall be interpreted or construed to waive, in whole or in part, or to otherwise diminish Lessor's statutory, common law or other immunities in any action in tort, in contract or in any other form. The parties further agree that if any duty assumed by Lessor under the terms of this Agreement or any action taken by Lessor pursuant to any such term is construed to waive, in whole or in part, any such immunity, then the immunity shall nevertheless be fully restored, and shall bind and protect the parties as a contractual undertaking.

Article XXI

Section 21.1. Authority: This Lease is authorized by Ordinance O-5-03 adopted by the Annapolis City Council.

IN WITNESS WHEREOF, the City of Annapolis, by and through its duly authorized agent, has caused this Lease to be executed on its behalf, and the Lessee, United States Yacht Shows, Inc., and Annapolis Boat Shows, Inc., have duly executed this lease this _____ day of _____, 2004, by their respective Presidents.

ATTEST:

CITY OF ANNAPOLIS

Deborah Heinbuch, City Clerk

BY: _____
ELLEN O. MOYER, MAYOR

UNITED STATES YACHT SHOWS, INC.

Witness

BY: _____
KATHRYN M. WOOD, PRESIDENT

ANNAPOLIS BOAT SHOWS, INC.

BY: _____

1 Witness

KATHRYN M. WOOD, PRESIDENT

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6 Approved as to form and legal sufficiency
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10 Shaem C. Spencer
11 City Attorney

Date

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